

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Repeal of Section 52.31 of the Commission's)	RM - 10792
Rules Regarding Commercial Mobile Radio)	
Service Local Number Portability)	
To: The Commission		

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"),^{1/} by its attorneys, respectfully submits these Comments in response to the Federal Communications Commission's September 16, 2003 Public Notice^{2/} seeking comment on the Expedited Petition For Rulemaking filed by the Cellular Telecommunications & Internet Association, Cingular Wireless LLC, AT&T Wireless Services, Inc., and Alltel Communications, Inc. ("the Petition"), which requests rescission of the Commission's Rules regarding Commercial Mobile Radio Service Local Number Portability. For the reasons described below, RCA supports the Petition.

The Petition seeks rescission of Section 52.31 of FCC Rules, 47 C.F.R. §52.31, which imposes upon wireless carriers obligations with respect to local number portability ("LNP") implementation. As grounds the Petition maintains that the FCC did not have delegated authority

^{1/} RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing these wireless service providers.

^{2/} *Consumer & Governmental Affairs Bureau Reference Information Center Petitions For Rulemaking Filed*, inviting statement opposing or supporting Petition Requesting Amendment of the Commission's Rules Regarding Commercial Mobile Radio Service Local Number Portability, RM No. 10792, Public Notice Report No. 2631 (rel. September 16, 2003).

from Congress to adopt the wireless LNP requirement. While the Commission previously decided that it does have authority to impose LNP, judicial review of the issue on the merits in the U.S. Court of Appeals for the D.C. Circuit will be available only upon conclusion of the rulemaking proceeding initiated by the Petition. To conserve wireless carrier resources and prevent consumer confusion, the Commission should act quickly on the matter presented and conclude that rescission is appropriate. Expedited FCC action will advance the point of certainty prior to LNP implementation deadlines.

The Commission Lacks Statutory Authority to Mandate Wireless LNP

The Commission's authority to require LNP is derived from Section 251(b) of the Act, wherein Congress identified the class of carriers subject to LNP requirements, and specifically named only local exchange carriers ("LECs") as subject to LNP. By a convoluted extrapolation the Commission extends the LNP mandate to Commercial Mobile Radio Service ("CMRS") carriers. The Commission claims independent authority to mandate wireless LNP by virtue of general delegations in Sections 1, 2, 4(i) and 332 of the Act. None of these provisions provide specific authority for the Commission to mandate wireless LNP, a matter that entails extraordinary costs and far reaching consequences for carriers and consumers.

The express congressional intent for LNP was that it would apply only to LECs. The Commission reaches a tenuous and indefensible conclusion in claiming that because the Act permits the agency to define the term "LEC," the Act "suggests strongly" that Congress intended to grant the FCC authority to extend the LEC-specific requirements to CMRS carriers.^{3/} The Commission admits that CMRS carriers are not LECs. It should admit that CMRS carriers are

^{3/} FCC brief filed in *Cellular Telecommunications & Internet Ass'n and Cellco Partnership d/b/a Verizon Wireless v. FCC*, No. 03-1264 (filed Feb. 3, 2003), referencing Section 153(26) of the Act, which authorizes the Commission to determine whether the term LEC should include wireless carriers.

not subject to LEC-only requirements, and that the Commission may not simply select *a la carte* those LEC requirements which will apply to CMRS.

Wireless LNP Is Not Needed to Promote Competition

The FCC has stated that the purpose of LNP is to promote competition, to make it easier for consumers to switch carriers, and to encourage efficient use and administration of numbering resources.^{4/} The fact of the matter is that all of these objectives are being met in today's marketplace without wireless LNP. The small rural wireless carriers represented by RCA are under tremendous pressure to react to competitive market forces, including the ease with which customer churn occurs among carriers, as well as the rate sensitivity, call quality and coverage area preferences found particularly among rural consumers. Numbering resources, furthermore, are already being managed efficiently in ways that actually contribute to each carrier's competitive positioning in the marketplace. In the absence of specific statutory authority where the statute itself is specific, wireless LNP cannot be justified as a means to redress wrongs that do not exist, or to fulfill the phantom intent of a tacit Congress.

The heart of competition is the distinction of offerings among carriers, not the homogenization of what each must offer pursuant to regulatory mandate. No regulatory barriers currently exist to hinder consumers from switching carriers, and there is no need to create regulations to promote it. The phone number available to a customer can be one of many factors to consider in choosing a carrier. One's number is not a recognized entitlement unless Congress acts to make it so, as it did in requiring LECs to honor LNP requests. Wireless LNP is not an item that Congress overlooked and the Commission must therefore address in the interest of

^{4/} *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184, and Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972 (2002) ("Verizon Wireless LNP Forbearance Order").*

promoting competition. Congress was specific in limiting LNP to LECs; the Commission must refrain from acting in substitute for the legislative vacuum.

Wireless LNP Will Harm Small Rural CMRS Providers

Consumers have been prepared by the Commission's Consumer & Governmental Affairs Bureau for telephone number portability, which is being presented as an opportunity to keep one's local telephone number when switching local service providers. The broad application of LNP to the wireless industry and the heightened consumer expectations created by the Commission's actions are highly prejudicial to small rural wireless carriers. RCA anticipates that customers will seek to port to larger wireless carriers, perceiving that their telephone numbers will become "local" in a larger area. This may in fact be the effect, to the detriment of small carriers.

Small carriers will be prejudiced because, despite their superior coverage and service in rural areas, they do not have the advertising dollars or economies of scale to compete against large carrier advertising campaigns that encourage customers to switch carriers. Small carriers face large customer losses and increased operating costs related to transport of calls, given that the Commission's Memorandum Opinion and Order released October 7, 2003,^{5/} on the subject of wireless-to-wireless LNP guidelines, does nothing to limit the exposure of carriers to transport costs of calls that are no longer "local" when a new serving carrier does not share a rate center with the donating rural wireless carrier. RCA believes that the Commission should have recognized and limited the exposure to transport costs by donating wireless carriers, considering that carriers commonly do not interconnect with the landline network in the same rate center. Uncertainty in this area, and the likelihood that the costs will be borne by the donating carrier

^{5/} *Memorandum Opinion and Order* in CC Docket No. 95-116 (FCC 03-237), released October 7, 2003.

(more often the small carrier), adds to the burden of small and rural carriers whose financial resources for LNP are severely limited.

RCA has previously urged the Commission to clarify that wireless-to-wireless LNP obligations should be imposed only where both CMRS carriers have numbering resources and interconnection facilities within the same rate center. In that situation, LNP would be available to the consumer only if the number is ported within the local calling area. But the Commission did not adopt this geographical restriction, and it did not clarify carrier responsibility for transport costs.

The disproportionate costs of LNP to small carriers, coupled with an upsurge in the exodus of customers to large carriers, will harm small rural wireless carriers. Wireless LNP thus has the perverse potential to diminish competition in rural areas by weakening the viability of small rural carriers and depriving the market of their commitment to high quality service as a means to compete with larger carriers. The survival of small carriers in rural areas is already threatened by multiple and expensive federal mandates. LNP is one requirement that is unauthorized, unnecessary and will harm the public interest in advancing viable competition among carriers.

Expedited FCC Action on the Petition Is Required

It is urgent that wireless LNP obligations be rescinded immediately before small CMRS carriers waste extremely limited capital resources on LNP compliance, including equipment and software acquisition, personnel training and consumer education efforts. The Commission should refrain from requiring carriers in the largest 100 MSAs to deploy LNP beginning November 24, 2003, and from requiring carriers outside the largest 100 MSAs to deploy LNP beginning May

24, 2004. For the good of the industry and of consumers, FCC determination of these unresolved issues should be forthcoming in an expeditious manner.

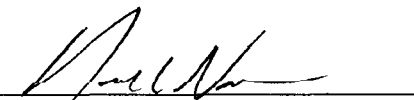
Conclusion

Congress specifically addressed LNP and restricted its applicability to LECs only. Extension of the LNP requirement to CMRS carriers directly contravenes the will of Congress and the express provisions of Section 251(b)(2) of the Act. In the absence of legislative action, there is no need or basis to extend LNP obligations to CMRS carriers.

Because the FCC lacks statutory or ancillary authority to impose LNP obligations on CMRS carriers, Rule Section 52.31 should be rescinded as being outside the bounds of Section 251(b) of the Act. CMRS carriers are entitled to judicial review of the implementation deadlines, and small rural carriers are in particular need of conserving resources, not misdirecting efforts and assets to a mandate that stands to be overturned in Court. For the reasons stated herein the Commission should act expeditiously on the subject Petition and rescind the LNP mandates for CMRS carriers.

Respectfully submitted,

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October 16, 2003

CERTIFICATE OF SERVICE

I, Daniel Ladmirault, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 16th day of October, 2003, sent by U.S. Mail, a copy of the foregoing COMMENTS OF RURAL CELLULAR ASSOCIATION to the following:

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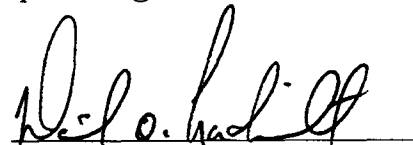
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